

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FERNANDO ROLON,

Plaintiff,

v.

CATHOLIC HEALTHCARE WEST,

Defendant.

2:12-cv-0110-LRH-VCF

ORDER

Before the court is defendant Catholic Healthcare West's ("CHW") motion to strike plaintiff Fernando Rolon's ("Rolon") amended complaint (Doc. #25¹) pursuant to Rule 37. Doc. #29. Plaintiff Rolon did not file an opposition to the motion.

I. Facts and Background

This is an employment discrimination action brought by Rolon against his former employer CHW. During his employment with CHW, Rolon alleges that he was retaliated against for engaging in certain protected activity.

On September 26, 2011, Rolon filed a complaint for employment discrimination. Doc. #1. In response, CHW filed a motion to dismiss. Doc. #10. Recognizing certain pleading defects, Rolon filed a motion to amend (Doc. #18) which was granted by the court (Doc. #21).

¹ Refers to the court's docket number.

1 Subsequently, on June 29, 2012, Rolon filed an amended complaint. Doc. #25. Defendant
2 CHW filed an answer (Doc. #26) and the parties engaged in discovery. After the close of discovery,
3 CHW filed the present motion to strike pursuant to Rule 37 for failure to attend his deposition or to
4 participate in any discovery. Doc. #29.

5 **II. Discussion**

6 Rule 37 of the Federal Rules of Civil Procedure provides in pertinent part that the court, in
7 its discretion, may issue sanctions, including dismissal without prejudice, against a party for that
8 party's failure to attend a deposition or otherwise participate in discovery. *See* FED. R. CIV. P.
9 37(b)(1) and (b)(2)(A)(v).

10 Here, it is undisputed that Rolon failed to attend his regularly noticed deposition and has
11 failed to participate in all other discovery in this action in violation of the Stipulated Discovery
12 Plan and Scheduling Order. Further, Rolon has not participated in this action since his counsel
13 withdrew and all notices by the court have been returned as undeliverable. Therefore, the court
14 finds that sanctions under Rule 37 are warranted.

15 In determining an appropriate sanction for failure to comply with a discovery order or attend
16 a scheduled deposition, the court examines five factors: (1) the public's interest in the expeditious
17 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to non-
18 offending party; (4) the public policy favoring disposition of cases on the merits; and
19 (5) availability of less drastic sanctions. *See Leion v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir.
20 2006).

21 Here, these factors weigh in favor of dismissal. The need for the expeditious resolution of
22 cases on the court's docket is strong. Further, defendant CHW has an interest in resolving this
23 matter in a timely manner and has been severely prejudiced by Rolon's failure to participate in
24 discovery. Discovery in this action has already concluded and Rolon's current whereabouts are
25 unknown, precluding CHW's ability to schedule another deposition. Finally, there is a lack of
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1 prejudice to plaintiff Rolon because he has shown an unwillingness to continue litigating this
2 action. Thus, although public policy favors a resolution on the merits, the court finds that dismissal
3 is warranted in light of these other considerations. Accordingly, the court shall grant CHW's
4 motion.

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6 IT IS THEREFORE ORDERED that defendant's motion to strike (Doc. #29) is
7 GRANTED. This action, 2:12-cv-0110-LRH-VCF is DISMISSED without prejudice.

8 DATED this 2nd day of April, 2013.

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LARRY R. HICKS
12 UNITED STATES DISTRICT JUDGE
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